

**DECLARATION OF ALPESH PATEL**  
**Pursuant to 28 U.S.C. § 1746**

I, Alpesh Patel, have personal knowledge of the facts and matters set forth below. If called as a witness, I could and would testify as follows:

1. My name is Alpesh Patel. I am over the age of 18 and reside in Emmaus, Pennsylvania.
2. In approximately June 2022, my wife and I were interested in starting our own Amazon ecommerce store, but we wanted a management company to help us run it. We did some research online and found a company called Passive Scaling. I filled out a form online and a sales agent named Alex reached out to me. Over the phone, Alex explained how Passive Scaling's operation worked. He said that we would pay an initial fee and Passive Scaling would create the Amazon store, run the store, set up inventory, manage customer service, and essentially be responsible for everything.
3. Alex also told us that our Amazon store would be up and running in two to three months and we would make \$2,000 to \$10,000 per month profit. He also said Passive Scaling currently had approximately 200 clients. I also viewed Passive Scaling's website and watched videos of testimonials of Passive Scaling clients who claimed they were successful and making money because of Passive Scaling's management of the business opportunity.
4. Since Passive Scaling was in New Jersey, I visited Passive Scaling's warehouse in New Jersey, and I met the owner of Passive Scaling, Steven, and Alex in person. Steven said he had multiple warehouses, but we visited the one located in Union, New Jersey. I had to pay a \$500 fee to visit the warehouse, but if we purchased Passive Scaling's business opportunity, that amount would be deducted from the initial fee. It looked like there were 10-15 people working there. Steven told me that if I put \$30,000 down for the initial fee, I could expect to earn a few thousand dollars every month in profit. He also told me that he

has clients who have opened up ten stores and who are making a lot of money, and I could do the same.

5. We opted to engage with Passive Scaling based on the belief that we could generate passive income with minimal effort on our part, potentially earning up to \$10,000 per month. The initial fee for one Amazon store was \$30,000, but we paid \$29,500 by check, having already contributed \$500 for the warehouse visit. Alex provided us with a proposal and contract, which we signed in June 2022 and subsequently sent the check in July. Alongside the initial fee, the contract outlined an additional \$99 software fee (to be paid directly to the software provider), and it stipulated that Passive Scaling would retain 35% of the net profit as a management fee. The designated software provider was sales.support. The contract specifies the address of Passive Scaling Inc. as 78 John Miller Way, Suite 2111, Kearny, NJ 07032. Attached as **Attachment A** is a true and correct copy of the contract and proposal Alex provided by Alex.

6. The contract contains a non-disparagement clause that says:

“During this Agreement and for one (1) year thereafter, the Parties mutually agree that any issues or problems that either party has regarding the other with respect to this Agreement shall be discussed with the other party in a professional and private manner. The Parties hereby mutually agree not to disparage, insult, or fabricate information regarding the other party in any online or offline forum or any other forum whatsoever, including but not limited to social media channels, regardless of whether such comments or information would not constitute libel or slander, and regardless of whether such comments could be deemed factually true.”

7. I never received any document from Passive Scaling with any information substantiating the earning and profit claims contained on their website, made over the phone by Alex, or made in person by Steven and Alex. I also never received a document from Passive Scaling telling me whether the company has been subject to legal action or giving me a list of consumers who purchased their services in the past 3 years.

8. After I signed the contract, I paid Passive Scaling \$3,380 for inventory.
9. Even though we were told that our store would be up and running in two to three months, it was not. We continually reached out to Passive Scaling, and nothing happened. We didn't have our first meeting until approximately eight weeks after we signed the contract.
10. Approximately six months after we signed the contract, in January 2023, our store was finally opened, but it still did not have any inventory in it, even though we'd paid nearly \$4,000 to Passive Scaling for inventory. It took nearly two months for Passive Scaling to load inventory in the store.
11. We tried to schedule meetings with Passive Scaling employees, but routinely no one would show up.
12. I was so frustrated and upset about the delays and lack of communication that I asked for a refund. I finally spoke with Steven, and he said that he did not have the money to give back to me right now. He said he paid Alex a huge commission on the store and so could only give me \$15,000 back, but he could only pay me back in monthly installments of \$1,000 per month. I told him that I would accept \$15,000 split up into three payments and that if he needed to, he could sue Alex to get the commission money back. Steven agreed to refund me, but then I never received any money back. He never paid me, and I never heard from him again.
13. I did not have any sales on my store, and Amazon ultimately suspended it, despite Passive Scaling telling us we would make up to \$10,000 per month in profit.
14. When I first signed the contract, I recommended Passive Scaling to a friend of mine. He spent \$50,000 on two stores, and his stores did not make any money either.

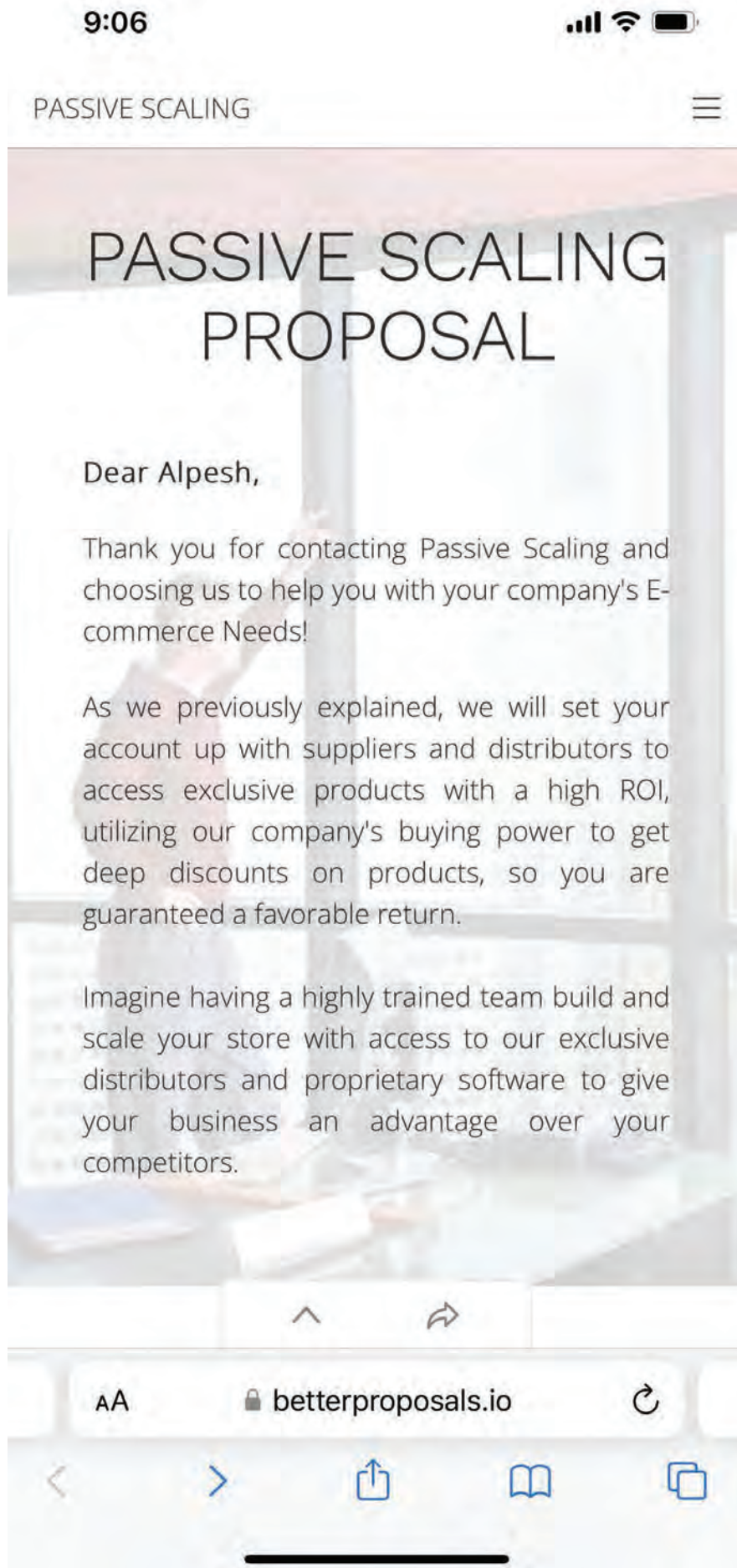
15. I filed a complaint with the Better Business Bureau (“BBB”). The BBB tried to get in touch with Passive Scaling, but Steven never responded to the complaint.

16. In June 2023, I also filed a complaint with the Pennsylvania Attorney General’s Office.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: March 18, 2024  
Emmaus, Pennsylvania

*Alpesh Patel*  
Alpesh Patel



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PASSIVE SCALING



## OVERVIEW

Our main objectives; Setting up your Amazon store, opening accounts with our exclusive suppliers and distributors, getting your account un-gated, and setting you up with our team to help build and scale your business.

### THIS IS ACHIEVED BY:

- First, our account managers will walk you through creating your Amazon account. After our team will open accounts with our exclusive distributors and start placing purchase orders to get you **un-gated** in as many categories as possible.
- Once accounts are opened with multiple suppliers and distributors, our skilled team will scan through a list of products with our catalog analyzer software and create your first purchase orders.
- Making smaller purchases with many items reduces risk and allows us to get **un-gated** in many categories and products, so we know we will sell the products without risk.
- We will make smaller purchase orders at the be count **un-gated** so we can

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## PASSIVE SCALING



risk.

- We will make smaller purchase orders at the beginning to get your account **un-gated** in multiple categories so we can take the next step of making larger and more profitable purchase orders.

Click to the next page to  
learn about your store  
setup

## Amazon Store Setup

We'll utilize our highly experienced team to set up and manage every aspect of your store.

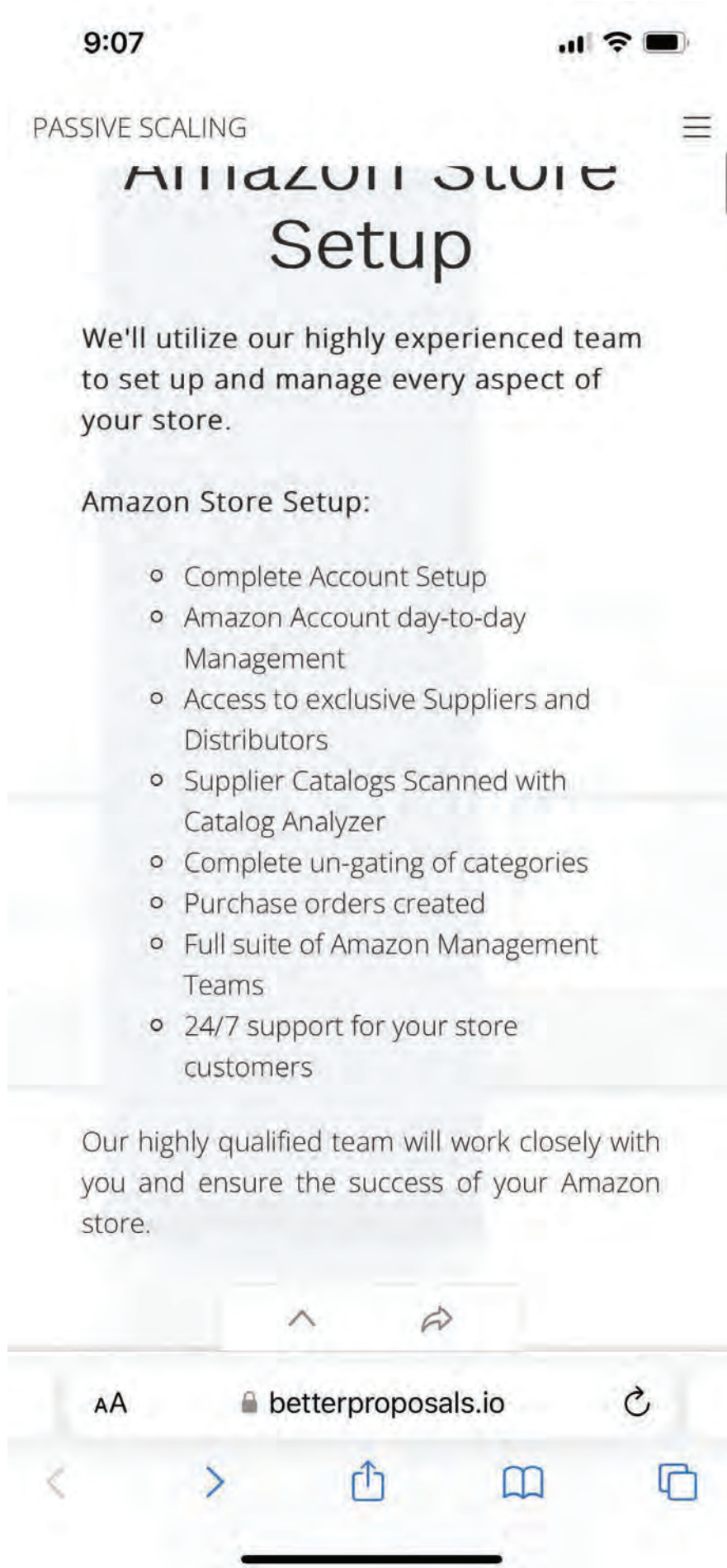
### Amazon Store Setup:

- Complete Account Setup
- Amazon Account day to day

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# Amazon FBA Prices

Label - \$0.34

Bundle - \$0.46

Polybag - \$0.46

Per Unit Shipping Fee -  
\$0.30

## Locations

California

New Jersey

New York

Texas

Ohio

## E-comm



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Quick and easy uploading  
through sales.support  
software will save you time  
and money with easy  
access to all 6 of our  
warehouses.

Click to the next page to  
view your initial investment

## THE INVESTMENT

Below you will find the one-time  
investment of your complete e-commerce  
setup.

This is paid after you sign our standard  
agreement. As soon as receipt of the wire  
transacti iate your



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## THE INVESTMENT

Below you will find the one-time investment of your complete e-commerce setup.

This is paid after you sign our standard agreement. As soon as receipt of the wire transaction is received, we will initiate your store build immediately.

### Investment Breakdown

#### Investment

Amazon Store  
Setup, Amazon  
Course, Virtual  
Assistant!  
Complete Setup

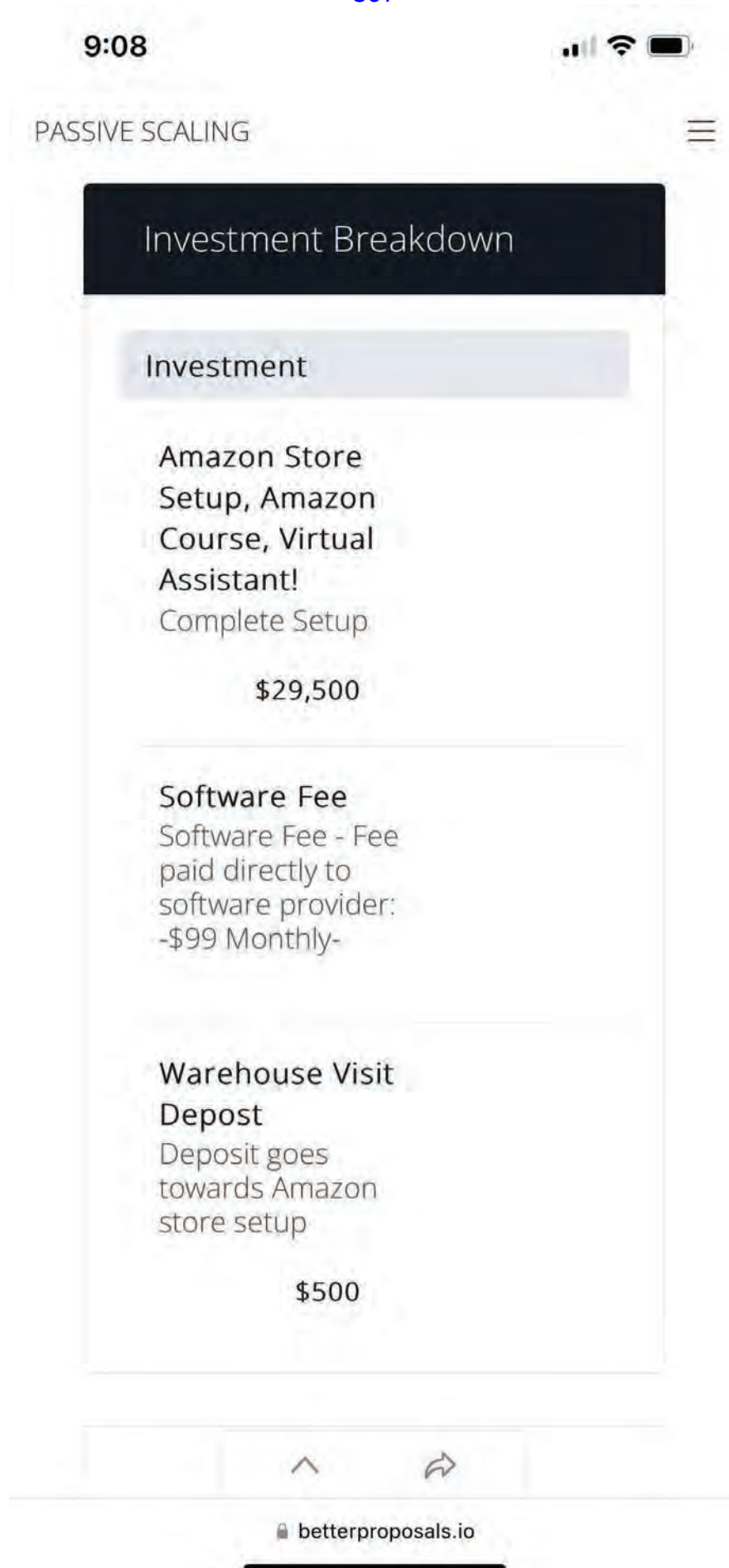
\$29,500

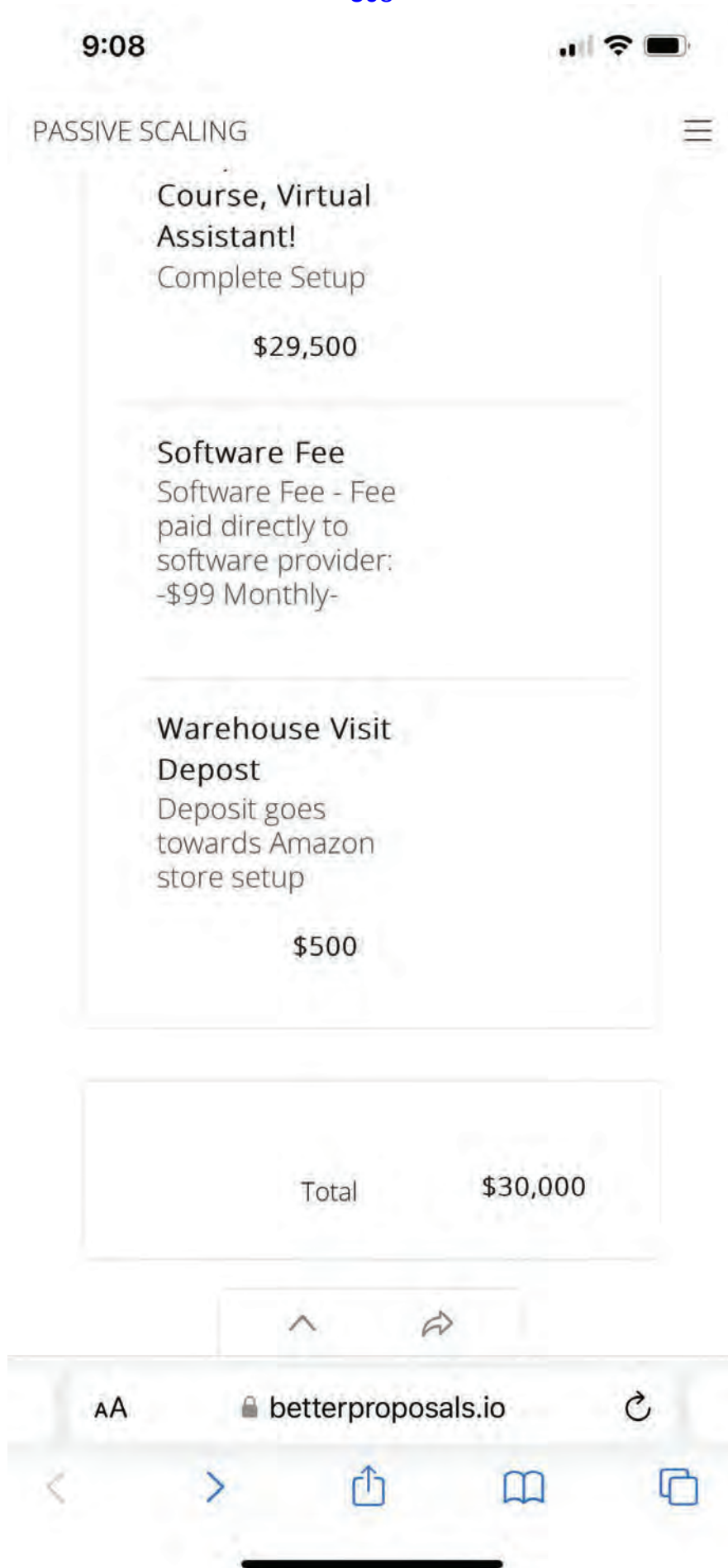
#### Software Fee

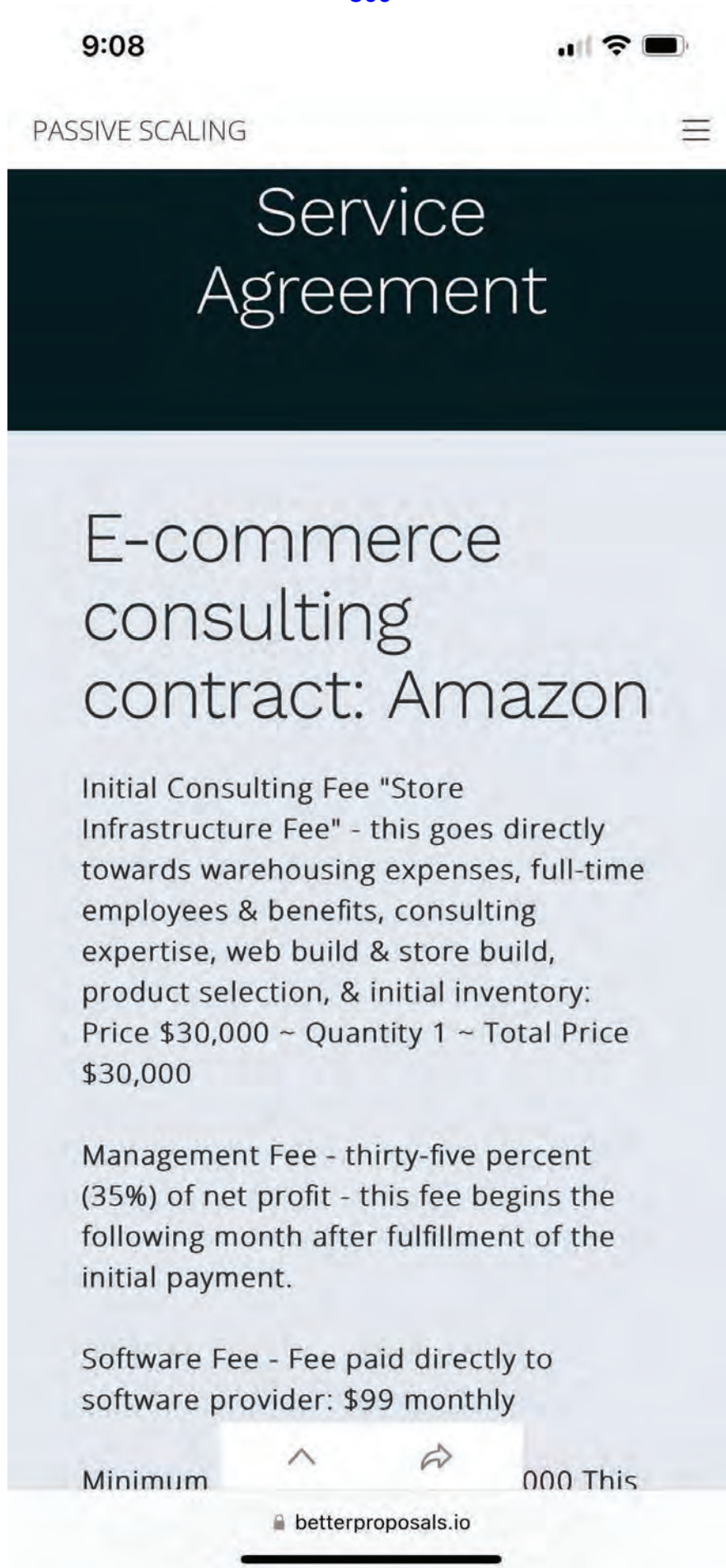
Software Fee - Fee  
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Management Fee - thirty-five percent (35%) of net profit - this fee begins the following month after fulfillment of the initial payment.

Software Fee - Fee paid directly to software provider: \$99 monthly

Minimum Working Capital - \$10,000 This is the minimum requirement of available credit or capital to cover inventory & wholesale price of drop shipped items. Amazon/Walmart pays every two weeks, and this money covers orders until the scheduled store payout.

Recommended credit available for the expedited scaling process is \$15,000.

Total one-time fee: \$30,000

This E-Commerce Consulting Agreement ("Agreement"), is dated as of, 14th June 2022 , by and between PASSIVE SCALING INC, a New Jersey Corporation company, whose address is 78 John Miller Way, Suite 2111 Kearny NJ 07032 (hereinafter "Consultant") and, Alpesh Patel (here



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## PASSIVE SCALING



This E-Commerce Consulting Agreement ("Agreement"), is dated as of, 14th June 2022 , by and between PASSIVE SCALING INC, a New Jersey Corporation company, whose address is 78 John Miller Way, Suite 2111 Kearny NJ 07032 (hereinafter "Consultant"), and, Alpesh Patel (hereinafter "Client").

WHEREAS, Client desires to engage Consultant's services, as an independent contractor, upon the terms and conditions herein set forth; and

WHEREAS, Consultant desires to render consulting services to Client upon the terms and conditions herein set forth; NOW, THEREFORE, Consultant and Client (together, the "Parties"), and other good and valuable consideration, the receipt and sufficiency are hereby mutually acknowledged, agree to the following terms and conditions whereby Consultant shall consult Client in connection with 2 (TWO) e-commerce store on the Amazon FBA platform (the "Store"):

CONSULTANT'S SERVICES - Consultant agrees to perform the following services ("Services"): Maintain Client's Store, including configuring the Amazon frontend ba

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## PASSIVE SCALING



frontend back end systems necessary to manage the Store. Review, research, source, select, and list products for the Client's Store. Respond to customers' phone and email inquiries in support of Client's Store and shall exercise good faith efforts to resolve customer inquiries, handle product returns, and manage billing matters. Maintain oversight of Client's Store and its financial performance; however, Consultant shall have no obligation to, and does not intend to, provide financial advice to Client concerning the operation of Client's Store (Client shall confer with its professional financial advisors concerning all financial inquiries).

## CLIENT RESPONSIBILITIES.

Client understands there is a period that will delay the commencement and commercial operations of the Store, including, without limitation, a 1 to 4 month configuration period (and perhaps longer, depending on the circumstances specific to each proposed Store) where Client must complete certain obligations. Until Client satisfies all contractual and legal requirements for the creation and operation of Client's Store, Consultant cannot commence



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and legal requirements for the creation and operation of Client's Store, Consultant cannot commence providing the Services as set forth in Section 1 of this Agreement. Within the first eight (8) months of this Agreement, Client will use best efforts to obtain, and maintain for the duration of this Agreement, a credit card issued through a United States federally insured banking institution with a minimum credit limit of fifteen thousand (\$15,000.00) dollars USD. In no event shall Consultant be responsible for payment of any kind and any other obligation under Client's credit card, all of which credit card obligations shall be solely that of Client. Furthermore, unless Consultant provides written consent: (i) at no time shall Client Pause its Store, allow for a Suspension, or place its Amazon FBA account or Store in Vacation Mode, such terms being defined or referenced on the Amazon FBA website or in other written materials made available to Client; and (ii) Client shall not allow its Store to remain shut down for more than ninety (90) days during the term of this Agreement. (B) Within thirty (30) days from the commencement of this Agreement, Client shall provide Consultant with only necessary information for the purpose of Consultant carrying out its obligations under this Agreement. Client shall use its best efforts to assist Consultant in obtaining all information deemed ne ^ ↻ implement

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CONSULTANTS SERVICES.

COMPENSATION. In consideration for this Agreement, Client shall pay Consultant a one-time consulting fee of thirty thousand (\$30,000.00) USD (the "Fee"), via wire transfer or ACH to Consultant's bank account within 72 hours of execution of this Agreement. Except as expressly permitted, the Fee is non-refundable.

Client shall also thereafter, beginning in the month following the month in which the Fee is paid, pay Consultant thirty-five percent (35%) of the Net Profit from Client's Store per month (the "Ongoing Commission"), plus an additional ninety-nine dollars (\$99) software fee paid directly to the software provider.

Client shall not be responsible for payment of the Ongoing Commission or the Maintenance Fee if, other than E-Commerce Consulting Agreement due to breach of this Agreement by Client, there is no activity in Client's Store for said month (or a portion thereof, where such portion exceeds 15 days). Consultant shall invoice Client monthly, and Client has seventy-two (72) hours to remit payment.

TERM – This Agreement shall commence on the last date of execution by both parties and shall continue in effect for a period of one (1) year (the "Initial Term") thereafter. Upon completion of the Initial Term, the Agreement shall autom



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TERM – This Agreement shall commence on the last date of execution by both parties and shall continue in effect for a period of one (1) year (the “Initial Term”) thereafter. Upon completion of the Initial Term, the Agreement shall automatically extend on a month-to-month basis (the “Option Term”) until written notice is provided by either party, to the other party.

TERMINATION – Client may terminate this Agreement at any time by providing written notice to Consultant. Consultant may terminate this Agreement, at any time, for cause, with fourteen (14) days written notice to Client. Consultant may terminate the Option Term, without cause, at any time. For this, “cause” shall include, but not be limited to: (1) any act or omission by Client, which interferes with the operation of the Store or Consultant’s ability to render Services, in Consultant’s sole discretion; or (2) Client’s breach or threatened breach of any term in this Agreement. If Client breaches any term under this Agreement, independent of any actions Amazon FBA may take from time to time, Consultant may Pause Client’s Store, which, Consultant may only reactivate, in Consultant’s sole discretion.

NON-DISPARAGEMENT – During this Agreement  
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NON-DISPARAGEMENT – During this Agreement and for one (1) year thereafter, the Parties mutually agree that any issues or problems that either party has regarding the other with respect to this Agreement, shall be discussed with the other party in a professional and private manner. The Parties hereby mutually agree not to disparage, insult, or fabricate information regarding the other party in any online or offline forum or any other forum whatsoever, including but not limited to social media channels, regardless of whether such comments or information would not constitute libel or slander, and regardless of whether such comments could be deemed factually true.

SALES / USE TAX – Consultant does not provide tax reporting or tax management services of any kind. Client is responsible for determining if Client is responsible for collecting and remitting sales or use tax under any applicable state or local law, regulation, or ordinance.

INTELLECTUAL PROPERTY – Client understands that Client's Store is a service hosted on the Amazon FBA platform and not a distinct or severable product or service that can be ported, removed or installed in or on a different place or platform. Accordingly,

Consultant  
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## PASSIVE SCALING



SALES / USE TAX – Consultant does not provide tax reporting or tax management services of any kind. Client is responsible for determining if Client is responsible for collecting and remitting sales or use tax under any applicable state or local law, regulation, or ordinance.

INTELLECTUAL PROPERTY – Client understands that Client's Store is a service hosted on the Amazon FBA platform and not a distinct or severable product or service that can be ported, removed or installed in or on a different place or platform. Accordingly, Consultant does not hold itself out to have any rights, endorsements, relations, or affiliation with Amazon FBA, or any of Amazon's copyright, trademark, trade dress, trade secret, or any other intellectual property right that Amazon FBA may hold (the "Intellectual Property Rights"). Further, Consultant cannot, and does not, grant or convey to Client any Intellectual Property Rights, whatsoever, in Client's Store, or Amazon FBA, and Consultant holds no legal or equitable rights in Client's Store.

RESTRICTED ACTIVITIES – Client acknowledges that during the Term of this Agreement Client will have access to Consultant's Confidential Information which, if disclosed, could assist in competition with third parties. Client

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RESTRICTED ACTIVITIES – Client acknowledges that during the Term of this Agreement Client will have access to Consultant's Confidential Information which, if disclosed, could assist in competition against Consultant by third parties. Client recognizes the highly competitive nature of Consultant's business, services, and its trade secrets, and that Consultant conducts its business electronically, through e-commerce, and throughout the United States. Therefore, Client agrees that the following restrictions on Client's activities are necessary to protect the good will, Confidential Information, and other legitimate business interests of Consultant, which restrictions are fair and supported by adequate consideration: shareholders, employees, Non-Competition, agents, the Term members of the Agreement, and for two (2) years following the termination of this Agreement (the "Restricted Period"), Client shall not be involved, directly or indirectly, whether as owner, partner, investor, consultant (paid or unpaid), agent, employee, co-venturer or otherwise, with any business that manages, operates, or promotes e-commerce stores or e-commerce transactions on behalf of third parties anywhere in the United States, regardless of whether Client is physically located within the United States or outside of the United States. Non-Solicitation. During the



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Confidential Information. The Receiving Party agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of Disclosing Party's Confidential Information. Without limiting the foregoing, Receiving Party shall take at least those measures that Receiving Party takes to protect its own confidential information. Receiving Party shall also immediately notify Disclosing Party, in writing, of any unauthorized use or disclosure of the Confidential Information. Confidentiality Term: Regardless of any termination of this Agreement, the parties expressly acknowledge and agree that their respective rights and obligation shall last for a period of five (5) years following the expiration of this Agreement or permissible termination of this Agreement; provided, however, that Client's duties of confidentiality thereunder with respect to Consultant's trade secrets shall survive such expiration and such duties of confidentiality shall continue and not expire so long as such Confidential Information is deemed a trade secret as a matter of law. In signing this Agreement, Client acknowledges that he/she/it has carefully read, consulted with legal counsel, and considered all the terms and conditions of this Agreement, including the restraints imposed on Client, throughout the United States. Client agrees that all such restraints are necessary for the proper protection of the Confidential Information of the Disclosing Party.

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## PASSIVE SCALING



has carefully read, consulted with legal counsel, and considered all the terms and conditions of this Agreement, including the restraints imposed on Client, throughout the United States. Client agrees that all such restraints are necessary for the reasonable and proper protection of Consultant, and that each and every one of the restraints is reasonable in respect to subject matter, length of time and geographic area (i.e., throughout the United States). Client further acknowledges that, were Client to breach any of the covenants contained, however caused, the damage to the Consultant would be irreparable. Client, therefore, agrees that Consultant, in addition to any other remedies available to it, shall be entitled to preliminary and permanent injunctive relief against any such breach or threatened breach, without having to post bond, together with reasonable attorneys' fees incurred in enforcing Consultant's rights hereunder.

## LIMITATION OF LIABILITY

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Attachment A

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# LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES WILL CONSULTANT, OR ANY OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES BE LIABLE FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES, HOWSOEVER OR WHENEVER ARISING, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST REVENUE, LOST PROFITS, ANTICIPATED PROFITS, LOST BUSINESS OR INJURY TO BUSINESS REPUTATION, COST OF PROCUREMENT OF SUBSTITUTE SERVICES, UNDER ANY THEORY OF LIABILITY OR CAUSE OF ACTION WHETHER IN TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, CONTRACT OR OTHERWISE, REGARDLESS OF WHETHER OR NOT IT HAS OR THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY SHALL NOT LIMIT CLIENT'S RIGHTS TO FILE SUIT AGAINST A THIRD PARTY OR PRODUCT VENDOR FOR ANY OF THE ABOVE LISTED CAUSES OF ACTION OR ANY OTHER CAUSE OF ACTION RELATED THERETO. SPECIFICALLY, CONSULTANT HEREBY COVENANTS THAT IT SHALL NOT TAKE ANY ACTION WHICH IS LIKELY TO CAUSE WAIVER OF ANY OF CLIENT'S RIGHTS WITH RESPECT TO THIRD-PARTY CLIENT'S

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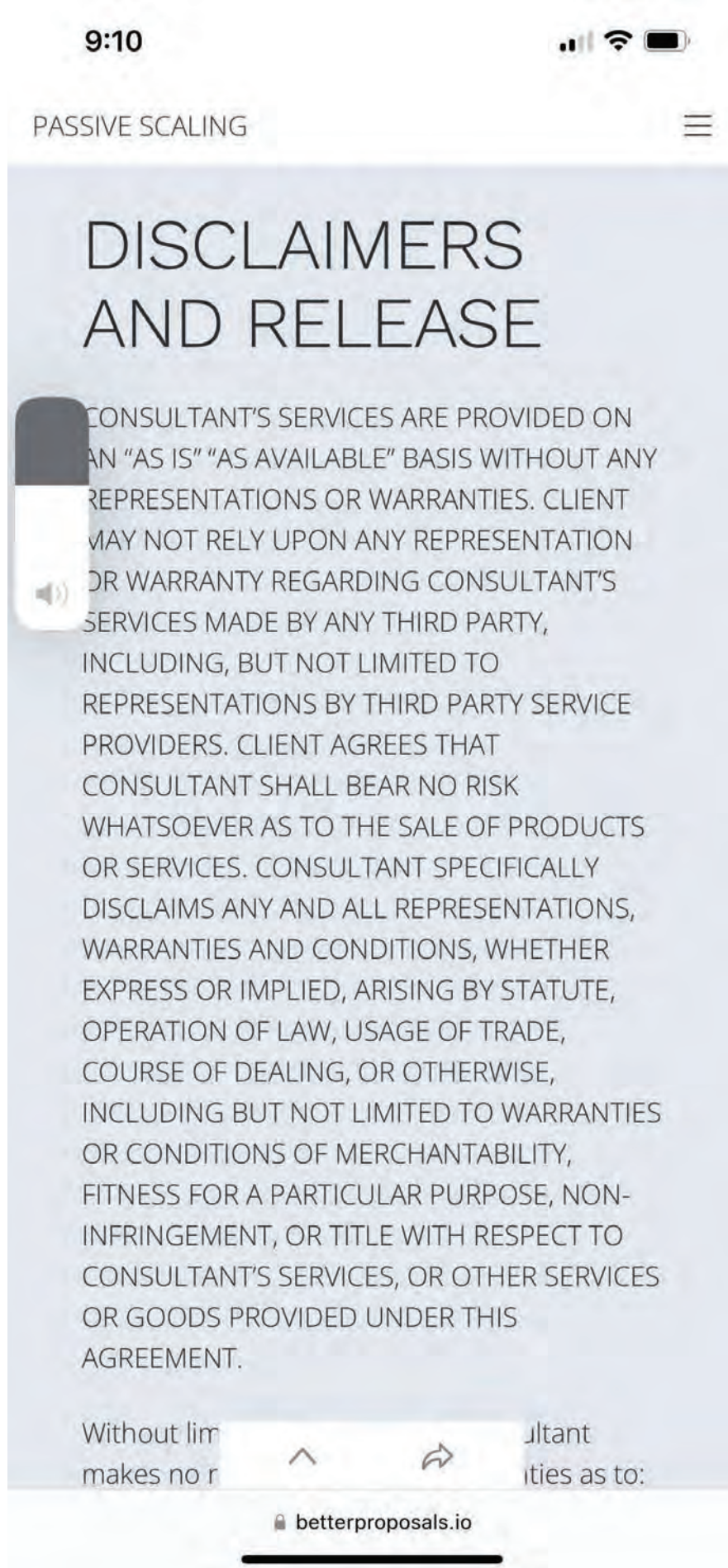


COVENANTS THAT IT SHALL NOT TAKE ANY ACTION WHICH IS LIKELY TO CAUSE WAIVER OF ANY OF CLIENT'S RIGHTS WITH RESPECT TO THIRD-PARTY LIABILITY WITHOUT CLIENT'S PRIOR WRITTEN APPROVAL. CONSULTANT ASSUMES NO LIABILITY FOR OR RELATING TO THE DELAY, INTERRUPTION, CORRUPTION OR FAILURE OF PRODUCT, DATA OR INFORMATION TRANSMITTED IN CONNECTION WITH THE STORE, INCLUDING WITHOUT LIMITATION ANY ACT OR FAILURE TO ACT BY AMAZON OR ANY FORCE MAJEURE CONDITION (INCLUDING BY WAY OF EXAMPLE ONLY, ANY PUBLIC HEALTH ISSUE). AS A LIQUIDATED DAMAGES REMEDY AND NOT AS A PENALTY, SINCE DAMAGES TO CLIENT RESULTING FROM BREACH OF THIS AGREEMENT BY CONSULTANT ARE DIFFICULT AND IMPRACTICAL, IF NOT IMPOSSIBLE TO CALCULATE, CONSULTANT SHALL ONLY BE LIABLE TO THE EXTENT OF ACTUAL DAMAGES INCURRED BY CLIENT, NOT TO EXCEED A TOTAL OF \$5,000.00 USD. AGREEMENT TO THIS PROVISION IS A MATERIAL INDUCEMENT TO CONSULTANT AGREEING TO ENTER INTO THIS AGREEMENT WITH CLIENT. THIS PROVISION 11.(C) SHALL PREVAIL IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY WITH ANY OTHER PROVISION IN THIS AGREEMENT.



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Without limiting the foregoing, Consultant makes no representations or warranties as to:

(1) the accuracy, the reliability, or the completeness, of any matter within the scope of this Agreement, including but not limited to the Store, the products therein, or the data, information, content, software, technology, graphics, or communications provided on or through the Store;

(2) the satisfaction of any regulation (government or otherwise) requiring disclosure of information on the products provided through or in connection with the Store or the approval or compliance of the Store or any software or information and content contained in the Store; or

(3) that the Store will satisfy Client's economic needs and requirements or reach any particular level of sales, income, or net profits. Business Risk – Client hereby understands that the creation and potential growth of the Client's Store carries financial and other risks. Client hereby understands that e-commerce is an ever-changing industry that is subject to numerous business risks, including but not limited to:

(i) a changing  
regulations



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that affects

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(3) that the Store will satisfy Client's economic needs and requirements or reach any particular level of sales, income, or net profits. Business Risk – Client hereby understands that the creation and potential growth of the Client's Store carries financial and other risks. Client hereby understands that e-commerce is an ever-changing industry that is subject to numerous business risks, including but not limited to:

(i) a changing legal environment in which regulations can emerge or change that affects the commercial sale of products through Amazon FBA via Client's Store;

(ii) economic changes that affect consumer spending, the emergence of recessions due to economic and other issues (including public health issues) and the like;

(iii) changes in the popular appeal of and demand for different types of Amazon FBA products;

(iv) changes in Amazon's terms and conditions, which can materially affect or even interfere with the marketability of Client's Store or its products;

(v) changes in international politics or economies, other things, the ; other  
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economies, which may affect, among other things, the ability to package, distribute and ship Amazon FBA products, and the costs thereof;

(vi) market forces, including increased and changing levels of competition for any given product from other sellers of such product;

(vii) unforeseen events, force majeure, public health concerns, and other external events that could affect the performance of any Amazon FBA Store.

Client hereby understands that there are no guarantees made by Consultant or otherwise as to the Store's sales, income, or profitability at any time, and acknowledges that Client is at risk of a total loss of his, her or its investment. Client acknowledges the substantial risks generally involved with an e-commerce business. Client recognizes that there is a possibility that subsequent to the execution of this Agreement, Client may discover facts or incur or suffer claims which were unknown or unsuspected at the time this Agreement was executed, and which if known by Client at that time may have materially affected Client's decision to execute this Agreement. By operation of this Agreement, and in particular the disclaimers of Consultant contained in the preceding subsections, Client assumes any and all risks of s uch

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unknown and unsuspected claims and expressly releases Consultant for any liability which Consultant could have had in connection therewith in the absence of the release herein provided by Client to Consultant. Consultant encourages Client to only invest funds that Client can afford to invest in an illiquid basis over a longer-term and perhaps ultimately lose, and to consult Client's legal and/or business advisors prior to investing in the Store.

Amazon FBA Terms and Conditions – Client hereby understands that Amazon FBA, from time to time, with or without cause, can and does suspend accounts for various reasons, some of which may not be obvious or justified in the Client's view. In the event Client's Store is suspended, Company will assist in sending an appeal on behalf of the Client and working with Amazon FBA to remedy the situation at no extra cost. Consultant makes no representations or warranties of any kind, however, that Amazon FBA will in such cases return Client's Store to active status. Furthermore, the Client agrees and understands that the Consultant makes no guarantees or representations regarding the Store in relation to any Amazon FBA policy, whether currently in effect or as may be amended by Amazon FBA from time to time. Client understands that Consultant has no control over whether



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PASSIVE SCALING



# GENERAL PROVISIONS

Non-exclusivity - Each party is free to contract with others with respect to the subject matter of this Agreement subject to the limitations as to Client of this Agreement.

Relationship of the Parties - Nothing herein contained shall constitute a partnership or a joint venture between the Parties. Consultant is performing its services to Client as an independent contractor and not as Client's agent or employee. There is no third-party beneficiary to this Agreement. Notices - All notices to either party shall be sent electronically to the email address(es) provided by each Party to the other and as otherwise set forth below. All notices to Consultant shall be sent to [info@passivescaling.com](mailto:info@passivescaling.com). If to Client, notice shall be sent electronically to, with a courtesy copy sent to. Alternatively, such written notice will also be deemed given upon personal delivery, or on receipt or refusal, if sent by U.S. first-class certified or registered mail, postage prepaid, return receipt requested, or by a recognized private delivery service, to the addresses stated on Page 1 of this Agreement.

Severability



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Severability, Headings - If any provision is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect. In such event, the Parties hereby acknowledge their intent to make such invalidated provision, or part of such provision, as to be deemed replaced with a valid provision or part of the provision that most closely approximates and gives effect to the intent of the invalid provision. Any such modification shall revise the existing invalid provision, or part thereof, only as much as necessary to make the invalidly-held provision otherwise valid. Headings are used for the convenience of reference only, and in no way define, limit, construe or describe the scope or extent of any section of this Agreement.

Dispute Resolution - Except where otherwise expressly set forth in this Agreement, any dispute or claim arising out of or relating to this Agreement shall only be resolved by binding arbitration. The arbitration of any dispute or claim shall be conducted in accordance with the American Arbitration Association ("AAA") rules, as modified by this Agreement, which shall take place in Miami-Dade County, Florida. Any arbitration proceeding, determination, or award, shall be confidential, and neither Party may disclose the existence, content or results of any arbitration proceeding required by law or for public policy reasons.

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## PASSIVE SCALING



of evidence at the arbitration (except where attorneys' fees and costs shall be awarded pursuant.

IF FOR ANY REASON THIS ARBITRATION CLAUSE IS DEEMED INAPPLICABLE OR INVALID, THE PARTIES FOREVER AND WITHOUT EXCEPTION WAIVE, TO THE FULLEST EXTENT ALLOWED BY LAW, ANY RIGHT TO PURSUE ANY CLAIMS ON A CLASS OR CONSOLIDATED BASIS OR IN A REPRESENTATIVE CAPACITY. No action, regardless of form, arising out of or in conjunction with the subject matter of this Agreement may be brought by either Party more than one (1) year after the cause of action arose. Amendment. This Agreement cannot be amended except in writing and signed by both Parties.

Electronic Signatures - This Agreement may be executed by electronic means and in any number of counterparts, each of which when so executed and delivered will be deemed an original, and all such counterparts together will constitute one and the same

instrument. Governing Law; Jurisdiction - This Agreement, the negotiations thereunder, and performance thereof shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Florida without reference to principles of conflicts of laws. Client hereby irrevocably consents to the personal ju  
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## PASSIVE SCALING



without reference to principles of conflicts of laws. Client hereby irrevocably consents to the personal jurisdiction of and agrees that the sole venue for any dispute arising in connection to this Agreement shall be the courts of competent jurisdiction (State and federal) located within Miami-Dade County, Florida. Client agrees not to commence or prosecute any such action, claim, or proceeding other than in such aforementioned courts. The parties hereto agree that Florida law shall apply regardless of any choice or conflicts of law principles. Client agrees that Miami-Dade County, Florida is a convenient forum, and waives any objection to same under forum nonconveniens principles.

Waiver - The failure of any party to insist on or enforce strict performance of any provision of this Agreement, or to exercise any right or remedy under this Agreement or applicable law shall not be construed as a waiver or relinquishment of the right to assert or rely upon any such provision, right or remedy.

Force Majeure - Neither Party shall be responsible for any failure to perform beyond its reasonable control, including, without limitation acts of God, national health emergency, acts or omissions of civil or military authority, civil disturbances, wars, strikes or other labor disputes, fires, transportation contingenc



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Attachment A

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contingencies, or interruptions in telecommunications, internet services, or third-party vendors.

Entire Agreement - This Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous oral and written agreements relating to the subject matter herein. Attorneys' Fees – If either party breaches this Agreement, or one party brings any action (including appeal) against the breaching party in connection with this Agreement, the substantially prevailing party in such action shall be entitled to recover his/her/its cost of the action and reasonable attorneys' fees.

Injunctive Relief - In the event of a breach or threatened breach, the aggrieved party shall immediately be entitled to pursue in any court of competent jurisdiction specific performance, injunctive relief, damages, or such other remedies and relief as may be available, regardless of any contrary provision of this Agreement. Additionally, due to the difficulty of measuring damages in the event of a breach of this Agreement by Client, the parties agree that, in the event of a breach of either by Client, Client shall owe Consultant total liquidated damages in the amount of Fifty Thousand Dollars (\$50,000.00) per breach. The Parties further agree that the total liquidated damage amount due shall be the amount set forth is

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## PASSIVE SCALING



prohibition of any other remedies of Consultant in the event of a breach of this Agreement by Client.

Independent Counsel - The Parties acknowledge that each has been advised to seek, and each has had sufficient opportunity to seek, independent legal counsel possessing industry experience in connection with this matter. The Parties have either sought such counsel or voluntarily waived such right to do so. Accordingly, in interpreting this Agreement, no weight shall be placed upon either party. Furthermore, the parties equally drafted this agreement; thus, the Agreement shall be construed neutrally, and no rule of construction shall apply to the disadvantage of any Party.

Assignment – Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party. Prior to any such assignment, said assignee shall execute an agreement identical to this Agreement. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, and assigns. Any purported assignment or delegation by either party in violation of the foregoing shall be null and void ab initio and of no force and effect.

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assignee shall execute an agreement identical to this Agreement. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, and assigns. Any purported assignment or delegation by either party in violation of the foregoing shall be null and void ab initio and of no force and effect.

Cure - If at any time either Client believes the terms of this Agreement are not being fully performed, prior to seeking or commencing any relief expressly permitted under this Agreement, Client shall notify Consultant in writing of the specific nature of such claim, and Consultant receiving such notice shall have thirty (30) days from receipt of the notice to cure such claimed breach.

Indemnification – Client agrees to indemnify, defend, save and hold harmless Consultant, including its respective insurers, directors, officers, employees, agents, and representatives (collectively the “Indemnified Parties” and each an “Indemnified Party”), and to hold each Indemnified Party harmless from and against any and all claims, damages, losses, liabilities, and expenses (including all attorneys’ fees and costs) which any Indemnified Party may incur or which may be asserted against any Indemnified Party by any person, entity, or authority, with or without



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## PASSIVE SCALING



breach of any representation, warranty, or covenant in this Agreement applicable to Client, and shall survive expiration or termination of this Agreement.

Survival – Any Section in this Agreement that requires survival shall survive the termination of this Agreement for the maximum period permitted by applicable law.

Client Data Management – Unless Consultant receives Client's prior written consent, Consultant shall not: (i) access, process, or otherwise use Client's Data other than as necessary to facilitate Consultant's Services; (ii) give any of its employees access to Client Data except to the extent that such individuals needs access to Client Data to facilitate the performance of Consultant under this Agreement; or (iii) give any other third-party access to Client Data except as necessary for such third-party to facilitate performance under this Agreement. Consultant shall not erase Client Data, or any copy thereof, without Client's express written consent and shall follow Client's written instructions regarding retention and erasure of Client Data so long as it does not interfere with the performance of Consultant's Services and performance under this Agreement. Client possesses and retains all right, title, and interest in and to Client Data, and Consul n thereof is solely in fur Services

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## PASSIVE SCALING



Client in violation of any applicable law, regulation, or government request, or judicial process.

Waiver of Jury Trial.

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN MATERIALLY INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Ministerial Services – In furtherance of Client's obligations, Consultant may offer Client guidance and referrals to third-party vendors. Additionally, Consultant may, in its discretion, and at no additional fee to Client, offer Client assistance i

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## PASSIVE SCALING



Ministerial Services – In furtherance of Client’s obligations, Consultant may offer Client guidance and referrals to third-party vendors. Additionally, Consultant may, in its discretion, and at no additional fee to Client, offer Client assistance in fulfillment of the obligations (“Ministerial Act”). Before Consultant commences any Ministerial Act, Consultant shall obtain Client’s written consent. Client agrees to reimburse Consultant for expenses incurred in carrying out a Ministerial Act. In the event Consultant offers to engage in a Ministerial Act, Client hereby agrees to indemnify, defend and save and hold harmless Consultant from any cost, claim, damage or liability (including attorneys’ fees and court costs) related to the Ministerial Act. Client also waives any claims against Consultant that may be related to the Ministerial Act. Client accepts that this indemnification and waiver of all liability related to the Ministerial Act is a material inducement for Consultant to make any offer to Client for such Ministerial Act, and without such indemnification and waiver from Client, Consultant would not make any such offer of assistance to Client to engage in the Ministerial Act. The foregoing indemnity of Client shall survive expiration of the Term of this Agreement or its earlier termination.

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## PASSIVE SCALING



DEFINITIONS – Words or phrases which are initially capitalized or are within quotation marks shall have the meanings as provided in Exhibit A of this Agreement, which is fully incorporated by reference and is a material part of this Agreement.

EXHIBIT A Definitions: Words or phrases which are initially capitalized or are within quotation marks in the e-commerce consulting agreement (“Agreement”) shall have the meanings provided in this Exhibit A. “Cash Back” means any revenue derived from cash back programs like Be Frugal. “Client Data” refers to any and all information processed or stored on computers or other electronic media by Consultant, by Client, or on Client’s behalf, or provided to Consultant by Client to perform the Services contemplated under this Agreement; including: information on paper or other non-electronic media, information provided to Consultant by Client, and personally identifiable information from Client, Client affiliated third-parties, and other users. “Confidential information” means any and all information of the Company that is not generally known to the public or those with whom the Company competes or does business, or with whom they plan to compete or do business, and any and all information, publicly known, publicly known in whole or in part or not, assist in


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## PASSIVE SCALING



information and all information disclosed or made available by Consultant to Client, either directly or indirectly, in writing, orally, by demonstration, or by inspection of tangible or intangible objects, including without limitation documents, files, texts, emails, phone calls, zoom calls, links, source code, software, charts, graphs, and any other form of communication. Confidential Information also includes information disclosed by Client to Consultant. Confidential Information shall not include any information (a) which Client can establish was publicly known and made generally available in the public domain prior to the time of disclosure, other than as a result of an improper disclosure by a party hereto, or (b) was in Client's possession on a non-confidential basis prior to its disclosure. "Net Profit" means the revenue, income, and sums owed to Client through the operation of Client's Store after deduction of (i) the cost of any goods sold in connection with Client's Store, and (ii) any Amazon FBA fees related to Client's store. "Pause" means the Store is considered in "Vacation Mode" due to a variety of reasons, including, but not limited to, insufficient credit available by Client to permit Consultant to render its services to Client as provided herein. "Prohibited Action" means any affirmative action taken by Consultant which constitutes: (1) willful copyright infringement as defined under the l shipping of te n five (5)

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## PASSIVE SCALING



days from the date of expected delivery of the goods, solely due to the fault of Consultant, and as to which the actions under (1) and (2) above have resulted in the Suspension of Client's Store. The term "proprietary business information" means Consultant's valuable trade secrets and confidential business information regarding its brand, vendors, sources, suppliers, techniques, processes, products, services, including, but not limited to, information regarding e-commerce transactions, Amazon FBA transactions, training materials, marketing and advertising materials, trade or industrial practices, customer and client correspondence, internal memoranda, project files, marketing plans, distribution channels, and relationships with, and identities of, customers, investors, clients, buyers, sellers, brokers, agents, representatives, distributors, manufacturers, and managers, as well as financial information, business, marketing and operating information, geographic sales information, social media analytics, price comparison information, sales data, sales programs, sales volumes, sales conversion rates, sales methods and processes, sales proposals, products, services, training manuals, sales scripts, income information, profit information, operating procedures, pricing policies, strategic plans, intellectual property, information about Consultant's contractors or



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## PASSIVE SCALING



Prohibited Action. "Vacation Mode" means any action other than a breach of this Agreement by Client which results in a condition of Client's Store where all sales activity in the Store has been temporarily halted.

### REFUND POLICY –

A. Subject to Paragraph (C) below, during the Term of this Agreement, if Consultant's Services result in a Prohibited Action, twice, Client has the option ("Refund Option") to request a refund. Additionally, following an eighteen (18) month period if the Client has not made back their initial store costs, Client has the option to request a refund within a thirty (30) day period following their 18th month of working days. To exercise the Refund Option, Client must notify Consultant of that election in writing. In that event, subject to Paragraph (C), Consultant will refund a portion of the Fee, as defined in Paragraph (B) below (the "Refund Amount").

B. The Refund Amount shall be calculated by the following formula: (x) the Fee-less (y) any Net Profit and Cash Back Client received during the Refund Period, and less (z) any Net Profit and Cash Back Client received through Passive Scaling; provided, however, that (1) Client has not engaged in any act that interferes with the operation c  
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## PASSIVE SCALING



B. The Refund Amount shall be calculated by the following formula: (x) the Fee-less (y) any Net Profit and Cash Back Client received during the Refund Period, and less (z) any Net Profit and Cash Back Client received through Passive Scaling; provided, however, that (1) Client has not engaged in any act that interferes with the operation of Client's Store or of Consultant's Services or which would be in breach of this Agreement, including, without limitation, a Suspension of Client's Store for any reason other than the occurrence of a Prohibited Action, and (2) this Agreement remains in full force and effect at the time Client exercises the Refund Option. The Parties further agree that under no circumstance shall the Refund Amount exceed the Fee.

C. Client's right to exercise the Refund Option under Paragraph (A) is expressly conditioned on Consultant first managing one replacement store (the "Cure Store") for Client, and the Cure Store also results in a Prohibited Action.

### TERMINATION –

Client may terminate this Agreement at any time by providing written notice to Consultant. Consultant may terminate this Agreement, at any time, for cause, with fourteen (14) days written notice to Client. Consultant may terminate t



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Client may terminate this Agreement at any time by providing written notice to Consultant. Consultant may terminate this Agreement, at any time, for cause, with fourteen (14) days written notice to Client. Consultant may terminate the Option Term, without cause, at any time. For this Section, "cause" shall include, but not be limited to: (1) any act or omission by Client, which interferes with the operation of the Store or

Consultant's ability to render Services, in Consultant's sole discretion; or (2) Client's breach or threatened breach of any term in this Agreement. If Client breaches any term under this Agreement, independent of any actions Walmart/Amazon may take from time to time, Consultant may Pause Client's Store, which, Consultant may only reactivate, in Consultant's sole discretion.



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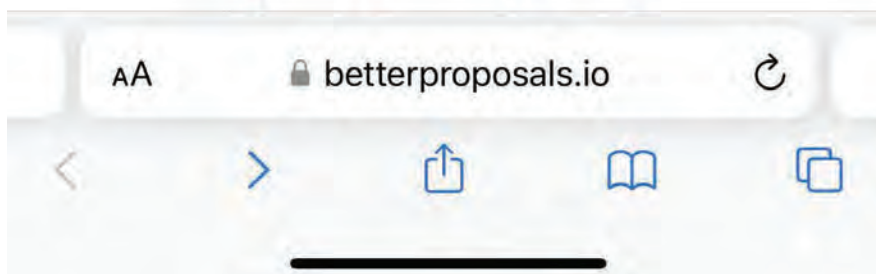


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To get started and to make the following  
steps as simple as possible:

**ONE** - Simply type your name in the box below  
and click "Sign Proposal".

**TWO** - Please refer to the Wire Instruction tab  
in this proposal for wire details

**THREE** - Please submit a screenshot of Wire  
Confirmation to your Sales Rep

**WE CAN'T WAIT TO START  
SETTING UP YOUR  
BUSINESS!**

I, Alpesh Patel, agree to the terms of  
this agreement and I agree that my  
typed name below can be used as a  
digital representation of my signature  
to that fact

Alpesh



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PASSIVE SCALING



I, Alpesh Patel, agree to the terms of  
this agreement and I agree that my  
typed name below can be used as a  
digital representation of my signature  
to that fact

*Alpesh patel*

Signed on 20 Jun 2022 at 19:45

[Make payment](#)

## Wire Instructions

PASSIVE SCALING INC

78 JOHN MILLER WAY SUITE 2111  
KEARNY NJ 07032

Signature Bank  
565 Fifth Avenue, New York, NY 10017

Account#



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Attachment A  
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I, Alpesh Patel, agree to the terms of this agreement and I agree that my typed name below can be used as a digital representation of my signature to that fact

*Alpesh patel*

Signed on 20 Jun 2022 at 19:45

[Make payment](#)

## Wire Instructions

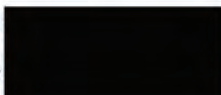
PASSIVE SCALING INC

78 JOHN MILLER WAY SUITE 2111  
KEARNY NJ 07032

Signature Bank  
565 Fifth Avenue, New York, NY 10017

Account#

Routing #

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Attachment A

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